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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,457	02/18/2004	Alan Brooks	CM2727C	1750

27752 7590 10/01/2004

THE PROCTER & GAMBLE COMPANY
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EXAMINER

VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,457

Applicant(s)

BROOKS ET AL.

Examiner

JYOTHSNA A VENKAT Ph. D

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-23 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/9/04 and 7/30/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of IDS filed on 6/9/04 and 7/30/04. Claims 1-23 are pending in the application and the status of the application is as follows:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of “ about “ for the definition of n is indefinite since the amino acids have fixed carbon chain length.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-5, 7-11 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,177,065 ('065).

See col.8, lines 59-61 for proline which is the zwitterionic bulking agent, see col.6, lines 1-5 for Polyvinylpyrrolidone which is the film-forming polymer, see col.7, lines 28-45 and see line 45 for maltodextrin which is the glassy material and also the species of claim 10. See the

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paragraph bridging cols. 7-8 for ascorbic acid which reads on claim 18 (vitamin C and its derivatives).

5. Claims 1-7, 13-15, and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0780116('116).

The disclosure at page 8, line 48 and page 1, lines 30-50 anticipates claims 1, and 3-7. The examples anticipates claims 1-2, 13-14 (butylene glycol) and 18-19. See pages 4-6 for vitamin derivatives which read on claim 18, see page 7, line 19 for glycerin claimed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-11 and 13-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of EP'116 and U. S. Patent 6,368,595 and Skin Care and Cosmetic Ingredients Dictionary, page 303(1994).

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The EP document does not teach the limitation of claims 16-17 and 20-23. The EP document teaches claim 20 without the range at page 8, lines 36-38, and particulate material which is microcrystalline cellulose and diatomaceous earth of claim 22 without the range at page 7, line 45 and line 51 respectively. Note that the lower range for each additive is 0.1% which is negligible. Patent '595 teaches topical application using the kit with film forming polymer which is polyvinyl alcohol. See the abstract. The patent at col.3 teaches maltodextrins of claim 10 and humectant of claims 14-15. The patent is relied for the limitation of claim 23. Both the references do not teach the limitation of claims 16-17. The skin dictionary teaches the use of urea as an emollient.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare compositions of EP '116 and use it in the form of kit taught by '595 which uses kit in analogous film-forming compositions and combine it with urea taught by the dictionary expecting beneficial effect. One of ordinary skill in the art would be motivated to combine the ingredients since the idea of combining the ingredients flows logically from the art. One of ordinary skill in the art would be motivated to combine with the reasonable expectation of success that by adding urea to the compositions of EP, the compositions exhibit increased moisturizing effects due to the combination of film-forming polymer, bulking agent, humectant, silicones, particulate material but also emollient properties taught by the dictionary using urea. Absent a showing the criticality of claim 17, the claims are rendered prima-facie obvious over the combination of the references.

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Allowable Subject Matter

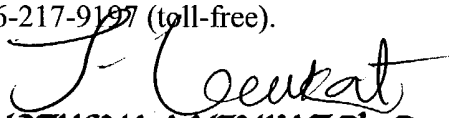
9. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Thursday, 9:30-7:30:1st and 2nd Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN K PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JYOTHSNA A VENKAT Ph. D
Primary Examiner
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